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RETENTION / RECAPTURE AGREEMENT FOR RENTAL PROJECTS

THIS AGREEMENT is entered into this ___ day of _____, _____ among _____ (the “Member”), and _____ (the “Sponsor”), and _____ (the “Owner”). For projects using Low Income Housing Tax Credits, the Owner will be a (State) limited partnership or limited liability company. The Member, the Sponsor, and the Owner are each a “Party” to this agreement, and are jointly referred to as the “Parties.”

RECITALS:

A. Pursuant to Section 721 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (“FIRREA”), the Federal Housing Finance Agency (“FHFA”) is required to cause each Federal Home Loan Bank (“FHLBank”) to establish an affordable housing program (“AHP”) to assist members of each FHLBank to finance affordable housing for very-low-, low-, and moderate-income households.

B. The Member is a member of the Federal Home Loan Bank of Chicago (“Bank”) and submitted an application dated _____, _____ (the “Application”) for an AHP grant for the purchase, construction, or rehabilitation of property commonly known as _____ and located at _____ (the “Project”). The Owner and Sponsor each have an ownership interest in the Project.

C. Pursuant to regulations (including, without limitation, those contained in 12 CFR Part 1291) promulgated by the FHFA pursuant to FIRREA (the “AHP Regulations”), members of each FHLBank are required to provide for the repayment of any subsidized advances or other subsidized assistance in connection with unused or improperly used AHP subsidies.

D. In connection with the AHP grant, the Member entered into that certain Affordable Housing Program Subsidy Agreement (“Subsidy Agreement”) dated _____, _____ with the Bank and the Sponsor, pursuant to which the Member and the Sponsor agreed to be bound by the AHP Regulations and to perform certain monitoring functions with respect to the Grant

(defined below).

E. The Parties desire to set forth the nature and duration of the income-eligibility and affordability restrictions associated with the Project.

F. The Parties desire to set forth, *inter alia*, those circumstances under which the Member shall be entitled to a recapture of Grant funds from either the Sponsor or the Owner in connection with the Grant to the Sponsor for the purchase, construction, or rehabilitation of the Project.

AGREEMENTS

1. Subsidy Amount. The Parties hereby acknowledge and agree that the Member has, on even date herewith, disbursed the proceeds of an AHP grant to the Sponsor and/or the Owner in the amount of \$ _____ (the "Grant").

2. Compliance and Term. The Sponsor and the Owner shall, at all times, comply with all laws, rules, and regulations (including, without limitation, the AHP Regulations), and with the provisions contained in the Application and in the Subsidy Agreement as they relate to the construction, ownership, management, and operation of the Project. The term, during which the Sponsor and the Owner must comply with the AHP Regulations to qualify and maintain the Grant, is fifteen (15) years from the date of project completion (the "Retention Period"), at which time this Agreement shall terminate.

3. Affordability Restrictions. The Sponsor and the Owner agree, during the Retention Period, to manage and operate the Project as rental housing for very-low-, low-, and/or moderate-income households. [For purposes of this Agreement, very-low-income households shall mean households whose annual income is 50% or less of area median income, low-income households shall mean households whose annual income is 60% or less of area median income, and moderate-income households shall mean households whose annual income is 80% or less of area median income, as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD"), the AHP Regulations, or as further provided in federal regulations.] [This Project serves households that are eligible for assistance from a Tribally Designated Housing Entity, and therefore, for purposes of this Agreement, very-low-income households shall mean households whose annual income is 50% or less of area median income, low-income households shall mean households whose annual income is 60% or less of area median income, and moderate-income households shall mean households whose annual income is 80% or less of area median income, where area median income is either as determined from time to time by the U.S. Department of Housing and Urban Development ("HUD") or as provided for in the Native American Housing Assistance and Self-Determination Act ("NAHASDA") income guidelines, whichever is greater.] The Sponsor and the Owner agree to make _____ of the units affordable for and occupied by very-low-income households, _____ of the units affordable for and occupied by low-income households, and _____ units affordable for and occupied by moderate-income households during the term of the Retention Period.

4. Notice of Sale or Refinancing. The Member and the Bank shall be given notice by the Owner of any sale, transfer, assignment of title or deed, or refinancing of the Project by the Owner occurring during the Retention Period.

5. Repayment of Subsidy and Exception. In the case of a sale, transfer, assignment of title or deed, or refinancing of the Project by the Owner during the Retention Period, the Sponsor and/or the Owner must repay to the Bank an amount equal to the full amount of the Grant, unless the Project continues to be subject, for the duration of the Retention Period, to a deed restriction or other legally enforceable mechanism incorporating the income-eligibility and affordability restrictions committed to in the Application.

6. Foreclosure. The income-eligibility and affordability restrictions applicable to the Project shall terminate after any foreclosure on the Project.

7. Compliance Documentation. The Sponsor and the Owner shall provide to the Member any information regarding the Project and use of the Grant pursuant to the AHP Regulations, as amended from time to time, and as required by the Bank.

8. Notice of Low-Income Housing Tax Credit (LIHTC) Non-Compliance. The Sponsor and the Owner shall provide prompt written notice to the Bank if the Project also received LIHTC and is in material and unresolved Non-Compliance with the LIHTC income targeting or rent requirements at any time during the Retention Period.

9. Breach of Affordability or Reporting Requirements; Breach by Owner.

(a) In the event that the Sponsor and/or the Owner, at any time during the term of the Grant, defaults in its obligation to manage and operate the Project and/or to provide compliance information as required pursuant to Section 7 above, or otherwise fails to comply with the terms of this Agreement, it shall be an event of Non-Compliance as defined in the Bank's Affordable Housing Program Definitions (part of the Bank's Compiled AHP Policies ("Compiled AHP Policies")). The Sponsor and the Owner shall repay either the Bank, or the Member if delegated the responsibility, that portion of the Grant which may be required to be repaid to the Bank (including interest, if appropriate), unless such Non-Compliance is cured by the Sponsor and/or the Owner within a reasonable period of time, or the circumstances of Non-Compliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

(b) In the event the Sponsor and/or Owner fails to use the Grant in compliance with the commitments of the Application or the requirements of the AHP Regulations, or in compliance with the requirements of the Compiled AHP Policies, it shall be an event of Non-Compliance (as defined above). The Sponsor and the Owner shall repay to either the Bank, or the Member if delegated the responsibility, that portion of the Grant which may be required to be repaid to the Bank (including interest, if appropriate), unless such Non-Compliance is cured by the Sponsor and/or the Owner within a reasonable period of time, or the circumstances of Non-Compliance are eliminated through a modification of the Application, pursuant to the AHP Regulations.

10. Indemnification and Survival. The Sponsor and the Owner hereby agree to fully and unconditionally indemnify, defend, and hold harmless the Member from and against any judgments, losses, repayment, liabilities, damages (including consequential damages), costs, expenses of whatsoever kind or nature, including, without limitation, attorneys' fees, expert witness fees, and

any other professional fees and litigation expenses, or other obligations incurred by the Member that may arise in any manner which result from the Sponsor's or the Owner's performance or failure to perform pursuant to the terms of this Agreement. The representations, warranties, obligations, and indemnification of the Sponsor and the Owner shall survive the term of this Agreement.

11. Notices. Notices, reports, and communications hereunder shall be in writing and shall be deemed to be properly given when personally delivered to the Party entitled to receive the notice, or three (3) days after the same is sent by certified or registered U.S. mail, postage prepaid, or by overnight courier properly addressed to the Party entitled to receive such notice at the addresses below; provided that recurring reports, certifications, and ordinary communications shall be permitted to be transmitted electronically. Any Party may, at any time, give notice in writing to the other Parties of a change of its address for the purpose of this Section 11.

If to the Member: [Member Name]
[Street Address]
[City, State, Zip]
Phone:
Email:
Attention:

If to the Sponsor: [Sponsor Name]
[Street Address]
[City, State, Zip]
Phone:
Email:
Attention:

If to the Owner: [Owner Name]
[Street Address]
[City, State, Zip]
Phone:
Email:
Attention:

If to the Bank: Federal Home Loan Bank of Chicago
433 West Van Buren Street
Suite 501S
Chicago, Illinois 60607
Phone: 312-565-5824
Fax: (312) 277-7455
Email: ci@fhlbc.com
Attention: Community Investment Department

12. Certifications. The Sponsor and the Owner hereby certify to the Member as follows:

(a) All the units in the Project will be open to income-qualified households without regard to sex, race, creed, religion, sexual orientation, or type or degree of disability.

(b) The Grant shall only be for uses authorized under Part 1291 of the AHP Regulations.

13. Joint and Several. The obligations of the Sponsor and the Owner hereunder are joint and several.

[SIGNATURES ON NEXT PAGE]

Executed and delivered as of the date first above written.

Name of the Member

By: _____

Its: _____

Name of the Sponsor

By: _____

Its: _____

Name of the Owner

By: _____

Its: General Partner